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4 JANE NIEVES,
5 Plaintiff,
6 v.
7 LEA WILDFLOWER,
8 Defendant.

Case No. 20-cv-05583-JD

ORDER RE REMAND

Re: Dkt. No. 18

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10 In January 2019, plaintiff Nieves got a “twenty-minute free ‘Thai’ Massage” from
11 defendant Wildflower, a massage therapist. Dkt. No. 1-1 ¶ 12. In February 2020, Nieves sued
12 Wildflower in Marin County Superior Court for a lower back injury that she attributed to the
13 massage. *Id.* ¶¶ 13-15. Wildflower timely removed the lawsuit to this Court on diversity
14 jurisdiction grounds. Dkt. No. 1. Nieves asks for the case to be remanded for lack of subject
15 matter jurisdiction. Dkt. No. 18. The case was removed improvidently and without jurisdiction,
16 and is remanded to the Superior Court. 28 U.S.C. § 1447(c).

17 Wildflower removed solely on the basis of diversity jurisdiction, which arises when a
18 plaintiff sues a citizen of a different state and the amount in controversy exceeds \$75,000. 28
19 U.S.C. § 1332(a). An out-of-state defendant may remove to federal court “any civil action
20 brought in a State court of which the district courts of the United States have original jurisdiction.”
21 *Id.* § 1441(a). The Court will remand to state court any case that was improperly removed because
22 of a lack of subject matter jurisdiction. *Id.* § 1447(c).

23 The governing standards are straightforward. *See generally California v. AbbVie*, 390 F.
24 Supp. 3d 1176, 1180 (N.D. Cal. 2019). There is a strong presumption against removal, and the
25 removal statute is strictly construed against finding federal jurisdiction. *Gaus v. Miles, Inc.*, 980
26 F.2d 564, 566 (9th Cir. 1992). Principles of federalism, comity, and respect for the state courts
27 counsel strongly in favor of scrupulously confining removal jurisdiction to the precise limits that
28 Congress has defined. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 109 (1941). The

1 defendant always “bears the burden of overcoming the ‘strong presumption against removal
2 jurisdiction.’” *Hansen v. Grp. Health Coop.*, 902 F.3d 1051, 1057 (9th Cir. 2018) (quoting
3 *Geographic Expeditions, Inc. v. Estate of Lhotka ex rel. Lhotka*, 599 F.3d 1102, 1107 (9th Cir.
4 2010)). Any doubt about removal weighs in favor of remand. *Hawaii ex rel. Louie v. HSBC Bank*
5 *Nevada, N.A.*, 761 F.3d 1027, 1034 (9th Cir. 2014). The Court has an independent duty to
6 determine whether subject matter exists, regardless of the absence of a challenge or argument by a
7 party. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006).

8 The parties focused on the citizenship element of diversity jurisdiction, namely whether
9 Wildflower was a citizen of California at the time the state court complaint was filed, or was a
10 citizen of New Mexico or at least on her way to moving there. *See Grupo Dataflux v. Atlas Glob.*
11 *Grp., L.P.*, 541 U.S. 567, 570-71 (2004) (citizenship determined at time complaint is filed). The
12 Court need not resolve the citizenship question, which involves a number of factual disputes,
13 because neither the complaint nor the removal notice provides a plausible basis for concluding that
14 the amount in controversy requirement has been satisfied. *See Ibarra v. Manheim Invs. Inc.*, 775
15 F.3d 1193, 1197 (9th Cir. 2014) (to determine amount in controversy, Court looks first to the
16 complaint); *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014) (when
17 complaint does not specify the amount in controversy, the defendant’s notice of removal must
18 include at least a “plausible allegation that the amount in controversy exceeds the jurisdictional
19 threshold”). An allegation is plausible when it is supported by enough facts to show that it is more
20 than just a possibility. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v.*
21 *Twombly*, 550 U.S. 544, 570 (2007).

22 The complaint is silent on the amount in controversy because California procedure
23 provides that “the amount demanded shall not be stated” in personal injury complaints. Cal. Code
24 Civil Procedure § 425.10(b). Consequently, Wildflower had the burden of plausibly alleging in
25 the removal petition that the amount at stake in the litigation exceeds \$75,000. *See Dart*
26 *Cherokee*, 574 U.S. at 84, 89; *Theis Research, Inc. v. Brown & Bain*, 400 F.3d 659, 662 (9th Cir.
27 2005). “Conclusory allegations as to the amount in controversy are insufficient.” *Matheson v.*
28 *Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090-91 (9th Cir. 2003).

1 Wildflower did not carry her burden. The amount in controversy allegation in the removal
2 notice is wholly conclusory, and is not supported by any facts or reasonable inferences. *See* Dkt.
3 No. 1 ¶ 4. The allegation was made on an information and belief basis, *id.*, which waters down its
4 utility even more. Nothing in the complaint rescues the removal petition by plausibly pointing to
5 an amount in controversy that satisfies the jurisdictional threshold. Nieves alleged a history of
6 lower back pain before the massage, which the massage is alleged to have aggravated. Dkt. No. 1-
7 1 ¶¶ 13-14. She went to two doctor visits and “was provided with pain management treatment.”
8 *Id.* ¶ 15. She expressly stated that the “exact amount” of her damages is unknown to her. *Id.* ¶ 16.
9 On these allegations, it is equally possible that Nieves’s damages are below the jurisdictional
10 threshold as above. Overall, Wildflower has not plausibly demonstrated that the amount at stake
11 in this case is enough to support federal subject matter jurisdiction.

12 Wildflower’s mention of a phone conversation with plaintiff’s counsel does not point to a
13 different conclusion. Wildflower says that plaintiff’s attorney declined to stipulate that the amount
14 in controversy was below the jurisdictional minimum. Dkt. No. 1 at 2. That is beside the point
15 because parties cannot stipulate or mutually consent to federal subject matter jurisdiction. *See*
16 *Wisconsin Dep’t of Corr. v. Schacht*, 524 U.S. 381, 389 (1998). In addition, multiple districts
17 courts in our circuit have concluded that a plaintiff’s stipulation *vel non* is not persuasive evidence
18 of the value of the underlying litigation. *See, e.g., Amirkhanian v. Costco Wholesale Corp.*, Case
19 No. CV20-02582 JAK, 2020 WL 4747612, at *4-5 (C.D. Cal. Aug. 8, 2020). The Court joins
20 those well-reasoned decisions.

21 Consequently, the case was removed improvidently and without jurisdiction, and is
22 remanded to the California Superior Court. 28 U.S.C. § 1447(c). The request for jurisdictional
23 discovery, Dkt. No. 25, and the motion to dismiss, Dkt. No. 14, are terminated as moot.

24 **IT IS SO ORDERED.**

25 Dated: November 30, 2020

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JAMES DONATO
United States District Judge